

PLANNING COMMISSION

MINUTES
February 9, 2011
7:30 P.M.
CITY OF FREDERICKSBURG
715 PRINCESS ANNE STREET
COUNCIL CHAMBERS

COMMISSION MEMBERS

CITY STAFF

Roy McAfee, Chair Dr. Roy Gratz, Vice-Chair Berkley Mitchell, Secretary Susan Spears Ricardo Rigual, Absent Edward Whelan, III Shawn Lawrence Ray Ocel, Director of Planning Debbie Ward, Zoning Officer

1. CALL TO ORDER

The February 9, 2011 Planning Commission meeting was called to order at 7:30 p.m. by Chairman Roy McAfee.

2. PLEDGE OF ALLEGIANCE

3. ADOPTION OF MINUTES

 January 26, 2011 Planning Commission Minutes – Approved/adopted as submitted.

PUBLIC HEARING ITEMS

1. SE 2011-01: Mary Washington Healthcare – Special Exception request in order to erect three free standing signs, two at the intersection of Jefferson Davis Highway and Mary Washington Boulevard and one at the intersection of Cowan Boulevard and Hospital Drive that are in excess of the maximum height and size requirements contained within the sign ordinance. Each of the three signs are proposed to be 30' tall and contain 229 square feet of sign area.

The applicants provided and asked the Clerk to distribute five letters of support asking for approval of the special exception request by Mary Washington Healthcare.

Mr. Ocel provided the following information to the Planning Commission:

Commission members will recall that the applicant requested that the special exception application be deferred until the February 9th public hearing. In the interim period of time, staff and the applicant have met to discuss the application and staff recommendation. The applicant has provided additional information to support the application and the information consists of a letter

dated January 26th and additional graphics and pictures. The applicant's request has not changed; the additional information is provided to further support the request for the three signs.

The applicant notes that the signs are critical to locating the hospital campus and believes an enhanced signage package is needed and the letter clearly lays out the need for the proposed sign package. The graphics page labeled A.9 provides a better depiction of the height of the proposed sign. Please note that the overall height of the sign is 32'6" which includes a 3' 4" column that rises above the sign face. The actually height of the sign is 29' 2".

Graphic A.8 is a new graphic that shows the approximate height of existing signs in close proximity to Mary Washington Boulevard in the Jefferson Davis Highway corridor. Although those signs are commercially oriented, they do provide competition for motorist's attention when driving in this corridor. The mature vegetation and man made improvements in the corridor makes picking out a sign at a stressful time (going to the hospital) all the more difficult.

Staff therefore recommends a maximum sign height of 29' (as opposed to the previously recommended 25') with a maximum sign area of 150 sq. ft. for the proposed LED Video Display panel and the Identification panel. The Emergency panel, proposed to be 19 sq. ft., should be approved as requested.

Taking into consideration the Cowan Boulevard corridor overlay standards and the presence of adjacent and nearby residential developments, staff recommends that the sign within the Hospital Drive right-of-way be erected at a maximum height of 20' (as opposed to the previously recommended 15') with a maximum sign area of 19 sq. ft for the Emergency panel and 75 sq. ft. for the Identification and LED Video panel. Any future free standing signs in this area of the corridor will not compete with this sign as the commercial signs do in the Jefferson Davis Highway corridor.

Staff further recommends that the existing blue hospital signs (H) located along the roadways be evaluated to make sure they are in the most effective locations and to determine if additional signs are needed to assist motorists in finding the hospital campus.

This is a request by Mary Washington Healthcare to approve two campus entrance pylon signs located at the entrance to Mary Washington Hospital Medical Center at the intersection of Mary Washington Boulevard and Jefferson Davis Highway and one sign at the intersection of Cowan Boulevard and Hospital Drive that are larger than permitted by the sign ordinance. The request to erect signs larger than the sign ordinance permits requires a special exception.

The first sign is located on the east side of Jefferson Davis Highway within the City's right-of-way and partially on University of Mary Washington property. The second sign is located on the west side of Jefferson Davis Highway within the City's Mary Washington Boulevard right-of-way and is intended to replace an existing sign at this location. The third sign is located on the east side of Cowan Boulevard within the private Hospital Drive right-of-way and is intended to replace an existing sign at this location. (Please see attachment 1)

The subject locations where the signs are proposed to be located have different zoning designations. The first sign, on the east side of Jefferson Davis Highway, would be located on property zoned R-2, Single Family Residential. The second sign, on the west side of Jefferson Davis Highway within the Mary Washington Boulevard right-of-way would be located on property zoned C-T, Commercial Transitional. The third sign, within the Hospital Drive right-of-way would be located on property zoned CT, Commercial Transitional. All three zoning districts have different sign regulations and they will be compared to the applicant's request later in this memo.

The applicant notes that the signs are intended to provide visible and appropriately scaled identification/landmarks for patients, visitors and emergency vehicular traffic arriving at Mary

Washington Hospital Medical Center Campus at its two main entrances to the Campus. Major buildings within the Campus are generally not visible to vehicular traffic travelling on Jefferson Davis Highway and Cowan Boulevard and therefore, the applicant cannot provide necessary visual queues for arrival to the Campus. The applicant further notes that the existing two signs are not prominent among competing commercial structures, signs and mature trees along the roadway to be visible to approaching traffic. Therefore, the proposed signs were designed using best practices for calculating sign visibility based on vehicular speed of travel, viewing distances and letter heights. The signs will have a maximum character height of 12 inches to provide optimum readability from unobstructed views up to a distance of approximately 600'. The signs will have internal illumination for night time viewing of letterforms and graphic areas of the signs only.

The signs are proposed to be constructed of brick, steel, aluminum and acrylic. The design compliments the exiting signs on the Campus and utilizes colonial architectural detailing. Each of the three signs will contain a static electronic message display for changeable community programming messages, emergency alerts and hospital messages.

Included within the application materials is a set of four color renderings of the proposed signs in their requested locations. Sheet A.2 notes the locations of the two signs on Jefferson Davis Highway; Sheet A.3 places the signs in the existing environment looking in a northerly direction. Sheet A.4 shows one of the proposed signs located on Mary Washington Boulevard looking in a southerly direction. Sheet A.5 notes the location of the sign on Hospital Drive. Cowan Boulevard is shown on the left side of the rendering.

Sheet A.6 shows a bird's eye view of the locations of the two signs in their proposed locations adjacent to Jefferson Davis Highway. Sheet A.7 shows the location of the sign on Hospital Drive.

When the Planning Commission and City Council review, consider, and act upon an application for a special exception under City Code 78-991, they shall do so using the following criteria:

a. Whether the grant of a special exception is consistent with the City's Comprehensive Plan;

The property is located in Land Use Planning Area 4: Fall Hill/Mary Washington Hospital. The Hospital is addressed in the seven key issues of the planning area, and states, "Expand the Mary Washington Hospital medical campus and surrounding supportive services and office development". Parcels 4-D and 4-E are noted in this area and are described as follows:

Table 1: Land Use Potential - Planning Area 4

Parcel	Acres	Current Zoning	Recommended Land Use
4-A	32	R-1 Residential	Planned Development – Residential
4-B	48	R-1 Residential	Public recreation area
4-C	5	C-T	Medium density-residential
4-D	46	С-Т	Offices and medical related facilities
4-E	5	c-sc	Neighborhood-oriented commercial and/or offices
4-F	28	R-2 Residential	Public recreation area
4-G	20	R-1 Residential	Cluster residential
4-H	Part of parcel 3-A	R-1 Residential	See Planning Area 3

Parcel 4-D

This 46 acre tract is part of the Medicorp/Mary Washington Hospital medical campus. It fronts on Cowan Boulevard, but is already served by Sam Perry Boulevard and Mary Washington Boulevard, which connect Cowan Boulevard and the Route-1 Bypass. The terrain is relatively flat on the plateau where Cowan Boulevard is located, but drops off to the northeast, toward the main hospital building. Proposed development is offices and medical related facilities.

Parcel 4-E

The western corner of Parcel 4-D abuts a 5 acre parcel that fronts on Cowan Boulevard. The topography is flat. Proposed development is neighborhood-oriented commercial uses and/or offices. There are no other areas along Cowan Boulevard, east of Interstate-95, that are zoned for commercial use, so development of this site should be a welcome addition for the many residential neighborhoods in this area.

Recommendation #9 for this planning area relates to the Hospital and states:

9. Provide for the continued development of medical offices and support services on MWH Medicorp/Mary Washington Hospital medical campus.

The applicant notes on page 4 that the application for the special exception for improved site entrance identification signage is consistent with recommendations of the Plan for continued development of the Medical Campus.

The applicant further states on page 4 that Jefferson Davis Highway and Cowan Boulevard are major transportation corridors in the planning area, and consistent with goals for corridors in this area, new entrance sign landmarks for MWHC that provide highly visible identification of critical medical services will compliment adjacent campus gateways, business center, shopping area and medical facilities. The new signage will further enhance goals of Suburban Business Districts and efficient and effective public/private healthcare services by promoting the medical center district and adjoining complementary services.

The application also notes a reference to Chapter 11: Community Appearance in regard to upgrading wayfinding and signage and gateways into the historic district.

The various goals, policies and initiatives of the Comprehensive Plan that relate to the Hospital Campus as noted above clearly note that the Hospital is a key institutional partner in the City and the hospital's continued development is important to the vitality to the City. However, much of this relates to health care services and uses on the Campus and surrounding properties. The reference to upgrading wayfinding signage in Chapter 11 is in reference to the City's wayfinding sign program and not in reference to private signage.

b. Whether the special exception is consistent with the goals, purposes, and objectives of the City's Zoning Ordinance.

The Sign Ordinance provides sign regulations for each zoning district based upon the purpose and intent of the various zoning districts. Each zoning district contains its own purpose and intent and the applicable sign regulations for each district take this into account based upon the uses permitted by right and by special use permit. Overall, the sign ordinance's stated purpose and intent is as follows:

Purpose and intent.

- (a) The purpose of this division is to regulate all signs placed for exterior observance in order to foster the city's policies for the protection of property values, the protection of the character of the various communities in the city, the encouragement of the sound development of land throughout the city for its most appropriate use, and the protection of the public welfare in general.
- (b) A sign placed on land or on a building for the purpose of identification, protection or advertising a use conducted therein shall be deemed to be an integral part of the land or building. Therefore, the purpose of this division is to establish limitations on signs in order to ensure that they are appropriate to the land, building or use to which they are appurtenant and are adequate but not excessive for their intended purpose. Business sign restrictions have been devised after considering, among other matters, shopping habits, extent of trade area, means of access, the avoidance of excessive competition among sign displays in their demand for public attention and the protection of commercial speech under the first amendment to the United States Constitution.
- (c) Advertising signs (billboards) are considered inappropriate to the character and sound development of the city and it is intended by this division that the streets and highways in the city shall not be made available for such display, except that advertising signs may be located in certain commercial and industrial districts in which they are deemed not to be incongruous with other uses permitted therein.
- (d) It is further intended that, in proposed commercial and industrial areas, all signs within one complex be coordinated with the architecture in such a manner that the overall appearance is harmonious in color, form and proportion.

The properties on which the three signs are proposed to be located are zoned differently as noted earlier; however, each sign is proposed to be the same size, height and architecture. Each sign will consist of a 162 sq. ft. identification sign; 48 sq. ft. LED video display panel and a 19 sq. ft. emergency panel for a total of 229 sq. ft. of sign area. Sheet A.2, found within the application materials shows the details of the sign.

Free standing sign regulations in these districts are as follows:

R-2 Sign Regulations: (Sign on east side of Jefferson Davis Highway) Nonresidential uses permitted in the district shall be permitted on identification sign, with or without a bulletin board, provided such sign does not exceed 12 square feet in area, does not exceed eight feet in height, and does not extend within 15' of any property line.

<u>C-T Sign Regulations:</u> (Mary Washington Blvd. and Hospital Drive rights-of-way) All freestanding signs shall:

- 1. Be low-profile, monument-type signs whose design, material, colors and lettering are compatible and harmonize with the main building on the site;
- 2. Be set back at least ten feet from all property lines and located in a manner that shall not cause a pedestrian or vehicular traffic hazard;
- 3. Not exceed 30 square feet of signage area if identifying one or two businesses on the site, or 40 square feet if identifying more than two businesses on the site;
- 4. Not exceed five feet in height above ground level;
- 5. Only be illuminated by ground lights, directed solely at the sign in a manner that does not illuminate surrounding areas, or by low-wattage internal lighting; and

6. Be appropriately landscaped with shrubs and/or plants.

In addition to these sign regulations, five properties along Cowan Boulevard are encumbered by proffers from a rezoning that was approved in 1986. One of those properties includes the Hospital Drive right-of-way where one of the signs is proposed to be erected. One of the proffers includes language in regard to signage and states:

"Development of the subject site will include a landscape entrance consistent with the subject area and an architecturally compatible entry sign package."

The proposed sign within the Hospital Drive right-of-way is located within the Cowan Boulevard Corridor Overlay. The corridor is described in the Zoning Ordinance as follows: Beginning at the intersection of Jefferson Davis Highway (U.S. Route 1 Bypass) and Cowan Boulevard and running along Cowan Boulevard in a northwesterly direction to its intersection with Interstate Route 95. The district shall extend back on each side of Cowan Boulevard a distance of 500 feet, as measured from the edge of the public right-of-way.

Signage design standards in the Cowan Boulevard Corridor Overlay District.

- a. Each site or development shall have an overall signage plan, including a consistent style, size, and color scheme for all signs on the property. Materials used in both sign and support structures shall complement the building being served by the sign.
- b. The only signage allowed within the streetscape buffer of a site or development shall be a single project identification sign, which shall be ground mounted, monument-style, and not more than eight feet in height and 60 square feet in surface area.
- c. Lighted signs shall be spotlighted or back-lighted with a diffuse light source. Spotlighting shall be shielded so that it does not spill over into adjacent properties or into motorists' eyes. Back-lighting shall be permitted for signs with dark opaque backgrounds, provided that light shines through only the letters, characters, or graphics of the sign.
- d. All sign colors shall be compatible and shall be consistent with the color, scale, and style of the building or site.
- e. Ground-mounted monument-style signs shall include landscaping around the base of the sign. The sign base shall be counted in the eight-foot height limit set forth in this section and shall not exceed 30 percent of the overall sign height.

All three proposed signs exceed the height and size limits noted in the sign regulations as well as the requirement to set the signs 10' or 15' (depending upon the zoning district) from the adjacent property line.

While the proffer contained within the rezoning of this land is not specific enough in regard to height and size of the sign, it does note that a landscape entrance be consistent with the subject area with an architecturally compatible entry sign package. The proposed brick materials found in the base of the sign match the surrounding building materials. The raised median area where the sign is proposed to be erected is currently landscaped with low shrubs and seasonal flowers and a new sign should be landscaped at its base as well.

c. Whether there has been sufficient period of time for investigation and community planning with respect to the application.

The process to develop the proposed sign package has been in process by the applicant during the past year and began discussing the sign package with the staff in the fall of 2010. The applicant notes on page 5 that it employed a firm over a 16 week period to study design options, and placement and feasibility of improved signage at its entrances. They surveyed existing signage at adjacent business centers and consulted best practices for calculating sign visibility based on vehicular speed of travel and viewing distances. The applicant also notes that public comment on existing visibility of wayfinding and identification signage at entrances to the Campus has been anecdotal, informal and consistent.

As part of this review process, the Commission will hold a public hearing on this application as well as any needed subsequent meetings to discuss the application and the City Council will also hold a public hearing once the Commission makes it recommendation to the City Council.

d. Whether the special exception is consistent with the principles of zoning and good zoning practice, including the purpose the district in which the special exception would be located, existing and planned uses of surrounding land, the characteristics of the property involved, and the adverse impacts of the proposed use.

The applicant notes that the hospital campus is located at the convergence of commercial and residential zoning districts and requires a special exception for identification signage that exceeds maximum requirements for the adjoining district and provides unobstructed recognition of this essential medical service within the City. The property where the hospital campus is located is zoned PD-MC, Planned Development Medical Campus and this district is established to permit the development and growth of hospitals to serve as the nuclei of medical center complexes with the City, and provide for an improved, convenient and efficient health care system for the region.

The proposed signs on either side of Jefferson Davis Highway far exceed the maximum height and size requirements for this location as well as existing signs in the area. However, staff concurs with the applicant's above statement and further notes that the Hospital requires unobstructed recognition of its services, particularly since the hospital campus itself is located away from Jefferson Davis Highway and Cowan Boulevard and cannot be seen from the highways leading to it.

While a sign on Jefferson Davis Highway requires unobstructed visibility for patients, care providers and visitors, staff suggests that this can be accomplished with one sign located in the area of the existing sign in the Mary Washington Boulevard median. In order to maintain a similar scale and size with other signs in the Jefferson Davis Highway corridor, permitting a clearly visible sign that can portray the information needed by patients, care givers and visitors, staff recommends the use of one sign, at the height of 29' with a maximum sign area of 150 sq. ft. for the proposed LED Video Display panel and the Identification panel. The Emergency panel, proposed to be 19 sq. ft., should be approved as requested. The location of the sign as well as the size should meet the applicant's goal of erecting a sign that provides an unobstructed recognition of this essential medical service within the City.

Taking into consideration the Cowan Boulevard corridor overlay standards and the presence of adjacent and nearby residential developments, staff recommends that the sign within the Hospital Drive right-of-way be erected at a maximum height of 20' with a maximum sign area of 19 sq. ft for the Emergency panel and 75 sq. ft. for the Identification and LED Video panel.

Commissioner Gratz asked staff to request that the applicant prepare a graphic that shows the proposed sign height and size in relation to the maximum permitted sign height and size in a commercial district. The applicant prepared attachment 2 to graphically depict the differences in

the signs. The differences between the two signs are evident. The height and size of the sign staff is recommending within the Mary Washington Boulevard right-of-way is slightly larger than the sign shown in the middle of this graphic.

e. Whether the proposed use or aspect of the development requiring the special exception is special, extraordinary or unusual.

The applicant addresses this criteria on page 6 of the application and notes that the need for the special exception is based upon an extraordinary and/or special condition. Major structures on the campus are generally not visible to vehicular traffic traveling along the Jefferson Davis Highway and Cowan Boulevard corridor and therefore cannot provide the necessary visual queues for arrival to the Campus. Patients and visitors travelling by vehicle to the Medical Center are often operating under stressful conditions and require clear and concise signage for wayfinding and navigation. In addition, a portion of the visiting population has visual or other physical disabilities. Therefore, the signs need to exceed current zoning requirements for typical signage for extraordinary and/or special circumstances.

Staff agrees with the applicant's assessment that a need exists for larger signs than permitted by the sign ordinance and that the request is special or extraordinary due to the service that is provided and the location of the campus not being visible to the public from either Jefferson Davis Highway or Cowan Boulevard. However, as noted above, staff believes the applicant's goal of erecting more visible signage can be accomplished by replacing the existing sign in the Mary Washington Boulevard right-of-way with a sign slightly smaller (25' tall and 169 sq. ft. than the one proposed, and a sign within the Hospital Drive right-of-way at a maximum height of 15' and 93 sq. ft in sign area.

f. Whether the applicant has demonstrated that its application meets all these criteria.

The applicant's submittal provides all the project specific information that is available and addresses the special exception criteria. Staff believes that this application meets the special exception criteria and can be considered a "special or extraordinary" request based upon the service the hospital provides to the community and region as well as the need to provide very visible identification signage for their full service primary care facility.

Since staff recommended a number of changes to the sign package in this report, staff recommends that the Planning Commission hold its public hearing and solicit public input at the January 12th meeting and defer action until the January 26th meeting.

The following conditions are provided for the Commission's consideration:

- 1. The project shall be developed in substantial accordance with the application for special exception dated December 1, 2010, including supplementary materials submitted by the applicant with the exception of the height and size of the signs as follows: Mary Washington Boulevard sign: maximum height of 29' and maximum sign area of 169 square feet; Hospital Drive sign: maximum height of 20' and maximum sign area of 93 square feet.
- 2. That the signs be erected within 1 year of the approval of the special exception.
- That the sign within the Hospital Drive right-of-way meet all other applicable sign regulations, excluding height and size, contained within the Cowan Boulevard Corridor Overlay District.
- 4. Be appropriately landscaped with shrubs and/or plants.

Mr. Walt Kiwall, Executive Vice-President and Chief Operating Officer, Mary Washington Health Care, home address 23 Walnut Farms Parkway, Fredericksburg, VA, provided a power point presentation of the proposed signage and their locations. He noted that there are 7,000 non-

residents that utilize Mary Washington Hospital every year and that these people as well as new residents to the area need clearer direction in order to arrive at the hospital in a more timely fashion. He said there is no clear indication there is a hospital when one is travelling in several areas on Route 1. He said the signage would be aesthetically sensitive to the Fredericksburg area as well.

Dr. Gratz asked Mr. Kiwall if Mary Washington Hospital had conducted any official surveys regarding being able/unable to locate the hospital.

Mr. Kiwall said that although they had not conducted any actual surveys, they have received comments from people stating that they had difficulty locating the hospital, particularly while travelling north on Route 1.

Ms. Spears thanked Mary Washington Hospital representatives for being proactive and said she believes the signs make sense and does not believe they are obstructive at all. She said there are times when people are in such trauma that they are unable to think straight let alone able to locate a hospital without difficulty. She said she is in complete agreement with the Special Exception request.

Mr. McAfee asked if there is any example, in particular, in the state of Virginia, where placement of an "H" on the road surface (such as the eagles for UMW) would provide a more identifiable and less intrusive indication of locating the hospital.

Mr. Robert Augusta, 550 Norwood Road, Downing Town, PA,(Consultant for MWH), said he did not have a specific example of having see that but that he had seen other examples of that technique used where they have indicated splits on the highway between different roots as one is approaching and believes this would help. He said there needs to be better signage aligning people with the left hand turn lane further back on the roadway, which is part of the reason for having the signage on that sign of the road.

Mr. McAfee said he believes, whether it would be MWH or VDOT's responsibility, that placement of an "H" on the road surface, indicating that that is the lane that one needs to be in would be a tremendous help and something to think about.

Mr. Whelan said he believes the proposed signage fits in aesthetically. He said he had a question regarding the northbound sign location. He said it seems to be pretty close to the entrance of the hospital and that perhaps a smaller warning sign further up in the roadway would allow people to know in advance that the hospital is coming up and allow them enough time to get into the turning lane.

Mr. Kiwall said one of the benefits of having signage on the right hand side is because it is on the uncluttered, unobstructed side of the highway. One of the differences that MWH is dealing with is that many hospitals of its size and campuses of their size have broad entranceways and MWH does not, instead, it has an access road. MWH does not own the property on both sides of the access road. When one owns the property, you are able to have a clear area to put signage (such as Fairfax Hospital). Instead, MWH is dealing with the business of other buildings and signage that creates the need to place signage on the right hand side of the road going Route 1 north.

Mr. Augusta said that he agrees with the recommendation that having an even smaller sign, perhaps a VDOT sign, further up the roadway that would indicate the left-hand turn lane coming up would help as well.

Mr. Lawrence said he agrees that the signage currently located at the hospital is not enough and believes what is proposed is a good thing. He said he is concerned with the blue "H" signs. He said he had driven around prior to the meeting and was only able to find three of these types of

signage. He suggested that there should be more "H" signs placed along the roadway leading to the hospital.

Mr. Kiwall said they would look at adding additional "H" signs along the roadway.

Dr. Gratz said he is concerned with the two signs at Route 1, particularly going North, someone going up there in the right lane and sees the sign on the right side and stay in the right lane and think they are supposed to turn right and don't realize that they actually need to turn left. Because of this, he said he did not see the necessity of that sign on the right. He said some other signage that had been discussed earlier such as that suggestion of Mr. McAfee regarding placement of "H" signage on the road surface, and perhaps additional small signage as suggested by Mr. Lawrence along the roadway leading to the hospital area.

Mr. Mitchell said that he believes the proposed signage is attractive. He asked staff what its justification is in its recommendation for smaller signage on Cowan Boulevard and to eliminate one of the Route 1 signs and to make the other one slightly smaller.

Mr. Ocel said that regarding the Cowan Boulevard sign, the competition for signage in that corridor is going to be different than the signage along the Jefferson Davis corridor. He said the City has in place the Cowan Boulevard corridor overlay design guidelines, as mentioned in the staff report, which require much smaller signage between Central Park and the hospital. And between the Hospital and Route 1 you basically have three apartment complexes, the Police Station, which as a freestanding sign out front and the school which also has a freestanding sign so there is not nearly the amount of competition for visibility of signage in that corridor as there is on Jefferson Davis Highway, which is why he made the recommendation of smaller signage along Cowan Boulevard.

Mr. Rupert Farley, 1305 Caroline Street, 22401, said he believes this application is an attempt to get a foot in the door and will start other businesses in the area to want more unnecessary signage. He said he believes there is ample signage already in place and asked that the Commission ignore what the Hospital is requesting and vote it down.

There was no further public comment on this item.

Mr. McAfee closed the public hearing on this special exception request.

2. ZOTA2011-01: Request to amend City Code Chapter 78, "Zoning," Article III, Sections 78-1, "Definitions", and 78-242, "Uses permit to be permit use permit (R-4 district) in order to permit small, licensed facilities of the permit small, licensed facilities of the permit small by the State Code.

Mr. McAfee asked if there was any public comment on this item since it had been advertised.

Being no comment, Mr. McAfee moved to the next agenda item.

3. **ZOTA2011-02:** Request to amend the City Code Chapter 78, Article III, "Zoning," by adding a new Section 78-936.5 to address new State Code legislation in regard to the issuance of a written order, requirement, decision or determination of vested rights by the Zoning Administrator.

Mr. Ocel said that this is text amendment to the Zoning Ordinance to define the Zoning Administrator's authority to issue binding written determinations that a specific use or density of land is permissible.

Privately held land is subject to applicable local Zoning Ordinances whether enacted before or after the property was acquired. Local governing bodies may change the zoning regulations and classifications, so long as the change is consistent with the zoning authority, and considered and adopted through the public hearing process set forth in Virginia law. The general rule is that all uses of land are subject to reasonable zoning regulations. One exception to this rule is that a use of land lawfully established prior to a change in zoning regulations is "grandfathered."

In limited circumstances, moreover, private landowners may acquire a vested right in *planned* uses of land even though the use has not been actually established prior to a zoning regulation change. The landowner may acquire a vested right to continue to develop land for a specific use or density when he or she (1) has obtained some official governmental approval of the project, (2) relies in good faith on the determination, and (3) incurs extensive obligations or expenses in diligent pursuit of the project. In the past, the official governmental approval consisted of an act of governing body, such as the issuance of a special use permit, approval of conditional zoning or some other official act such as the grant of a variance or the approval of a site plan.

In 2010, the General Assembly amended the Code of Virginia to provide that in some circumstances, a written determination of the Zoning Administrator could constitute the official governmental approval of a specific use or density of land. The question of whether a particular planned but not established use of land is "grandfathered" is of great importance with respect to financial obligations that the owner might undertake, and with respect to the interests of neighboring landowners and the City at large.

Prior to the 2010 General Assembly, the City litigated the question of when a Zoning Administrator's decision creates a vested right in the use of land. In that case, the landowner argued that an informal conversation with the Zoning Officer created a vested right in a land use. This argument did not carry the day. One purpose of the proposed ordinance is to prevent or preclude such arguments in the future.

Another local example is the case of the determination that the establishment of an anti-terrorism training center in Stafford County was a permitted use as a "school." These types of determinations should be made according to a specified application process, with full information provided to the zoning administrator and with written notice provided to affected neighboring landowners.

The purpose of the proposed ordinance is to establish the conditions and define the circumstances under which the Zoning Administrator may issue a written determination regarding the permissibility of a planned specific use or density when such determination is sought as, or which may be regarded as, the basis for a vested right in a specific use or density of property.

Specifically, the ordinance:

- 1. limits this authority to the Zoning Administrator only; opinions by assistants or other local officials will not give rise to vested rights;
- 2. requires a written request for zoning determination; a verbal conversation will not be adequate to begin the process;
- 3. provides for notice of any determination to be provided to the landowner and to neighboring landowners who may be affected;
- 4. provides for notice of a right of appeal to be given to the landowner and neighboring property owners;
- 5. requires the landowner to provide all information reasonably required by the Zoning Administrator in order to issue the written determination.

The City Council has referred this proposal to the Planning Commission for its review, public hearing, and recommendation, as required by the Code of Virginia for any zoning ordinance amendment. Staff recommends that the Planning Commission recommend approval of the Ordinance prepared by the City Attorney. He said that Mr. McAfee had sent him an e-mail requesting a copy of the minutes when the City Council referred this request to staff. He distributed a set of those minutes to Commissioners to read prior to the next meeting on this issue.

Mr. McAfee said that he had read the ordinance several times and knew something in it was troublesome. He said that the City would be putting the Director in a position in making a determination without consulting the affected parties first. He said he would add a provision to it that requires the applicant to provide the City with the addresses of the affected properties and then that they be notified by mail and allowed a reasonable time period to respond to staff and that those responses made part of the record prior to the Director making his determination. He said he believes that by involving they first, before making a determination, could avoid unnecessary lawsuits, aggravation, etc. He said he has some draft language he would provide to Mr. Ocel.

Mr. Ocel said Mr. McAfee's suggestion would be fine.

There was no public comment.

Being no further comments, Mr. McAfee closed the public hearing on this item.

4. ZOTA2011-03: Request to amend the City Code Chapter 78, Article III, "Zoning," by amending Section 78-1104.5, "Civil Penalties" to in order to make the illegal use of land or a structure a criminal penalty as opposed to a civil penalty.

Mr. Ocel said this request is for the adoption of a Zoning Ordinance Text Amendment in order to make the illegal use of land or a structure a criminal penalty as opposed to a civil penalty pursuant to the Zoning Ordinance.

The Code of Virginia provides localities with two alternatives for addressing Zoning Ordinance violations by making the violation a criminal violation or by treating the violation through a civil penalty process in lieu of the criminal process. The City Code currently addresses overcrowding violations through the criminal process, but virtually all other violations are specified for treatment through the civil penalty process. The City has used its uniform schedule of civil penalties since 2007. The illegal use of land or a building is currently specified for treatment through the civil penalty process. However, staff proposes to remove this violation from those specified for a civil penalty, and restore it for treatment under the criminal penalties set forth in City Code §78-1104.

At this time, the illegal use of land or a structure is a civil penalty and the Zoning Administrator or his designee may issue a civil summons for the violation. Any person issued a ticket for such a violation may pay the civil penalty in person or in writing by mail to the City Treasurer prior to the date fixed for trial in court. Any person may enter a waiver of trial, admit liability, and pay the civil penalty. The person is informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. The amount of the civil penalty is \$200 for the first violation and \$300 for each subsequent violation, with a total maximum amount of \$5,000 for any one set of facts.

By far the most frequent violations handled by the Zoning Officer are for prohibited signage and a large portion of these violations are from repeat offenders. Most other violations are considered a nuisance or a minor type of infraction and the institution of civil penalties was recommended as a

way to make the best use of staff time, as well as the court's time, and offer a deterrent for minor violations and repeat offenders.

However, staff proposes to remove the land use violation from the list of civil penalties and restore it for treatment under the criminal penalties. Illegal uses of land are typically continuous, and the issuance of a civil penalty of \$200 or even \$300 is not an effective deterrent. The primary focus of the enforcement action is to stop the continuing violation; even full collection of the civil penalty is not an adequate substitute. Restoration of this violation as a criminal violation will reduce the time it takes to proceed to bring a land use violation into compliance. In fact, the Code of Virginia provides that when the General District Court determines that a criminal zoning violation is uncorrected at the time of conviction, it shall order the violator to abate or remedy the violation within a time period established by the court. This important judicial authority is available only in the criminal setting, not in the civil setting. The burden of proof is higher in a criminal prosecution ("beyond a reasonable doubt") versus a civil proceeding ("preponderance of the evidence,"); and in a criminal proceeding, the judge establishes a fine of between \$10 and \$1,000.00, so there may be less revenue associated with the criminal violation. But the criminal violation is the most effective in bringing the authority of the court to bear upon the cessation of the illegal activity.

Mr. Ocel said that staff recommends amending the City Code to remove the illegal use of land from the specified civil penalty enforcement section, and restoring it to the criminal penalty section and approval of the Zoning Ordinance Text Amendment as outlined in the City Attorney's Ordinance.

Mr. Whelan said he is concerned that older properties, which currently existed prior to the Zoning Ordnance and are not in compliance, will be subject to criminal penalties through no fault of their own because they were unaware of the noncompliance of the property prior to purchasing it themselves.

Mr. Ocel said the smart thing to do, which many people do, is prior to purchasing a property they request a zoning verification letter, asking if the zoning on the property is correct, if there are any outstanding violations, etc., and then we give them a written determination of yes or no and they would know right then if the property is in compliance.

Mr. Whelan said he understands that from this point forward once the new amendment is enacted. However, he said there are properties perhaps that were purchased as far back as forty years ago where an owner may not know it is non-compliant. He said he is not sure if there are a lot of properties that this could cause a problem.

Mr. Ocel said there are not a lot of these types of properties but when we do have them we need to move fairly quickly. He said a couple that typically come to mind are ones such as overcrowding. When the City has these types of issues and the property owner does not take care of it, issuing fines may not necessarily do away with the overcrowding issue if they simply pay the fine(s). Fines do not make the violation go away. He provided an example of a previous overcrowding issue, which took almost a year to resolve.

Ms. Spears asked why the City changed it previously.

Mr. Ocel said a couple years ago the City thought imposing civil penalty fines would rectify these types of problems, which for the most part it has. However, he said land use violations needs to go back to a criminal offense.

Mr. McAfee asked if there is a way to codify this so you don't have violations such as a resident that has allowed their grass to get too long penalized with criminal penalties.

Mr. Ocel said those types of issues do not and would not fall under this amendment. He said this amendment would cover the illegal use of land.

There was no public comment on this item.

Mr. McAfee closed the public hearing on this item.

OTHER BUSINESS

Planning Commissioner Comment

 Mr. McAfee inquired as to whether it is possible to provide City Code updates/amendments to Municipal Code Corporation (Municode) and have them posted on the web in a more timely fashion.

Planning Director Comment

- Mr. Ocel said he had met with the consultant on the Lafayette Boulevard Corridor Overlay Design Guidelines and provided him with the Planning Commission comments. He said he hopes to have an informal public meeting sometime in March (not a public hearing), inviting folks along the corridor.
- As a follow-up to the joint City Council/Planning Commission meeting, Mr. Ocel said he hopes to have a copy of the re-write fairly soon and will provide a copy to the Commission. He suggested that perhaps the Commission may want to hold another informal worksession on the issue prior to a public hearing.

Roy McAfee, Chair

ADJOURNMENT

Meeting adjourned